ATTORNEY FOR APPELLANT:

ANTHONY S. CHURCHWARD
Deputy Public Defender
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

THOMAS SNEED,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0806-CR-271
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0801-FD-35

October 16, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Thomas Sneed appeals his sentence for three counts of resisting law enforcement. He raises the issue of whether his sentence is inappropriate in light of the nature of his offense and his character. We affirm.

Facts and Procedural History

On the night of January 9, 2008, Sneed was driving a van in Fort Wayne with his headlights off. Police officers attempted to pull him over, and he fled from them in the van and then on foot. When the officers caught up with him, Sneed physically resisted their attempts to arrest him. Police later determined that Sneed had been driving with a suspended license.

On January 15, 2008, the State charged Sneed with one count of class D felony resisting law enforcement, two counts of class A misdemeanor resisting law enforcement, and one count of class A misdemeanor driving with a suspended license. On February 13, 2008, Sneed entered a plea of guilty to all four counts of resisting law enforcement. There was no plea agreement. The trial court dismissed the charge of driving with a suspended license after finding a lack of factual basis and accepted Sneed's plea as to the other three counts, however.

On March 12, 2008, the trial court ordered Sneed to serve concurrent sentences: three years for the class D felony and one year for each of the class A misdemeanors. Sneed now appeals his sentence.

Discussion and Decision

Sneed argues that his three-year sentence is inappropriate. He asks us to revise the sentence in accordance with Indiana Appellate Rule 7(B), which states, "The Court may

revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The burden is upon Sneed to persuade us that his sentence is inappropriate. *See Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. We are required to "exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires us to give 'due consideration' to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions." *Stewart v. State*, 866 N.E.2d 858, 865 (Ind. Ct. App. 2007).[1]

Sneed says very little about the nature of his offenses and his character in his appellate brief. We will state our impressions based upon our review of the record. As for the nature of his offenses, Sneed fled police in his car at night with his headlights off, creating an extremely dangerous situation for officers and the public. When considering the nature of Sneed's character, we look to his lengthy criminal record. He has thirty-four prior misdemeanor convictions and nine prior felony convictions. He has committed at least one crime during each of the last twenty years, except for 1995, during which he was incarcerated. He has several convictions for violent crimes, including domestic violence,

[1] Sneed characterizes our standard of review as "very deferential[,]" citing *Martin v. State*, 784 N.E. 2d 997, 1013 (Ind. Ct. App. 2003), and *Foster v. State*, 795 N.E.2d 1078, 1092 (Ind. Ct. App. 2003). We refer Sneed to *Stewart*, in which this Court stated that the often-cited *Martin* and *Foster* cases "suggest excessive deference to the trial court under Rule 7(B), which clearly conflicts with the current, more vigorous approach to revising sentences that a majority of our supreme court has adopted." *Stewart*, 866 N.E.2d at 866. In *Neale v. State*, our supreme court noted that the rewording of Rule 7(B) to allow revision of "inappropriate" as opposed to "manifestly unreasonable" sentences "changed its thrust from a prohibition on revising sentences unless certain narrow conditions were met to an authorization to revise sentences when certain broad conditions are satisfied." 826 N.E.2d 635, 639 (Ind. 2005).

battery, and battery by bodily waste. He has violated the terms of his probation on several occasions. He has eight prior convictions for resisting arrest. Clearly, Sneed has no respect for the law and those who enforce it. He has failed to persuade us that his three-year sentence is inappropriate.

Affirmed.[2]

KIRSCH, J., and VAIDIK, J., concur.

[2] In the context of his Rule 7(B) claim, Sneed also seems to argue that the trial court abused its discretion by failing to assign sufficient mitigating weight to his guilty plea. We note that all but one of the cases cited in Sneed's appellate brief were decided when the presumptive sentencing scheme was in effect in Indiana and are thus outdated. The advisory sentencing scheme, which became effective on April 25, 2005, applied to Sneed's sentencing. Pursuant to the current advisory sentencing guidelines, a trial court is permitted to impose any sentence within the applicable statutory range regardless of the presence or absence of aggravators or mitigators. Ind. Code § 35-38-1-7.1(d). Sneed's three-year sentence was clearly within the advisory range of six months to three years for a class D felony conviction. *See* Ind. Code § 35-50-2-7. Moreover, in 2007, our supreme court held that the weight accorded the aggravating and mitigating circumstances found by the trial court is not subject to appellate review. *See Anglemyer*, 868 N.E.2d at 491. For these reasons, Sneed's weight argument fails.